

REMARKS

To more particularly recite the presently claimed invention, Applicant has amended claims 1-4, 6, and 15 to cover a shoe comprising an exterior shoe sole comprising at least one scented plug or insert (as supported, e.g., at pages 3-7), and have canceled claims 5, 7-14 and 16-21 solely to further prosecution and to reduce issues on appeal, and to more particularly recite what Applicant regards as his invention. It is believed that no new matter is added to the amended claims.

On pages 2 and 3-4 of the Office Action, the Examiner objects to the drawings under 37 CFR 1.83(a) and 35 USC 132, asserting that new drawing showing each of the claimed features of the invention, including "shoe sole," "scented compound," "visual aspect," "two or more plugs or inserts", with no new matter entered, or the features removed from the claims, and where the drawing of the O-ring should be claimed and drawn in Figure 1 only as supported by the specification.

Applicant provides informal amended Figure 1 to include each of the currently claimed elements, which Applicant believes to not include any new matter. Applicant will provide formal drawing when claims are allowed.

Accordingly, reconsideration and withdrawal of this objection is requested.

On pages 3-4 of the Office Action, the Examiner rejects claim 9, as failing to enable to comply with the enablement requirement, asserting that claim 9 lacks clarity by the use of the term "void can accommodate said at least one scented plug or insert comprising any embodiment of an O-ring around the non-wearing circumference of the entire shoe," as the description of the "ring" in the specification was not understood by the Examiner.

Although Applicant disagrees with the Examiner, and solely to further prosecution and to reduce issues on appeal, Applicant has canceled claim 9, rendering this rejection moot.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of this objection.

On page 4-5 of the Office Action, the Examiner has rejected claims 1-7 and 9-21 under 35 USC 112, second paragraph, as indefinite, for the reasons presented on pages 4-5 of the Office Action, in particular objecting to:

- (a) the terms “etc.”, generally in the claims;
 - (b) the functional recitation of scented material/compound while the term scented material is positively recited and “void creating means” in claim 6,
 - (c) the recitation of the term “does not comprise said at least one scented ... smoking means” is not understood as to what is being claimed in claim 7;
- and
- (d) the recitation of the plug or insert having multi-sectional construction not being understood in claim 18.

Although Applicant disagrees with the Examiner, and solely to further prosecution and to reduce issues on appeal, Applicant has canceled claims 1, 6, 7 and 18, rendering this rejection moot.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hartung, et al. (US 4,257,176). Hartung, et al. disclosed, per the abstract: “An insole for footwear has odor masking or malodor counteractant material dissolved, trapped or encapsulated in a somewhat resilient resin coating through which it will progressively migrate or bleed under application of foot loads, foot perspiration and elevated foot temperatures to the surface of the coating to be released into the footwear to mask or counteract foot odors.”

Applicants have amended claim 1 to recite a shoe comprising an exterior sole to clarify that the present invention does not include or relate to insoles, as fully supported by the present specification, e.g., at pages 3-7. Hartung is an insole that is

installed in the interior surface of a shoe where the user's foot resides, and comes in direct contact with the foot of the shoe wearer. Unlike the present invention, Hartung does not come in direct contact with outside ground surfaces such as pavements, floor coverings, etc. An intended purpose for Hartung is "to mask or counteract foot odors", whereby the present invention has no deodorizing aspects for insoles, but is rather meant to provide a scent to the outer sole of the shoe, boot, etc.

Thus, the present invention does not recite, disclose or include insoles, but discloses and claims shoes comprising exterior shoe shoes that have scented or fragrant inserts or plugs have a desired aroma. Accordingly, the cited reference fails to disclose each and every element of the present claims.

Accordingly, the present claims distinguish over the cited reference(s). Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claims 1, 6-7, 9, 11, 14, 15, 17, 18, 19-21 are rejected under 35 U.S.C. 102(b), as being anticipated by Laughlin, et al. (US 5,732,485). Laughlin, et al. comprises, per the abstract: "A deodorizer for masking foot and shoe odors through controlled release of fragrance..." whereby said deodorizer is installed in "the interior surface of a shoe", where the user's foot resides, i.e., the insole.

Claims 5, 7-14 and 16-21 have been canceled solely to further prosecution, rendering this portion of the rejection moot. Applicants have amended remaining independent claim 1 to recite an exterior sole to clarify that the present invention does not include or relate to insoles, as fully supported by the present specification, e.g., at pages 3-7.

Laughlin, as is Hartung, relates to an insole to mask or counteract foot odors using a deodorizing insole, whereby the present invention has no deodorizing aspects for insoles, but is rather meant to provide a scent to the outer sole of the shoe. Additionally, there is no suggestion in Laughlin for scenting the exterior sole of a shoe, as presently claimed.

Thus, the present invention does not recite, disclose, include or suggest insoles, but discloses and claims scented shoe shoes. Accordingly, the cited reference fails to disclose, teach or suggest each and every element of the present claims.

Accordingly, the present claims distinguish over the cited reference(s). Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claims 8, 12 and 13 are rejected under 35 U.S.C. 102(b) as anticipated, or 103(a) as obvious over Laughlin '485, for the reasons presented on page 6 of the office action.

Applicants have amended remaining independent claim 1 to recite an exterior sole to clarify that the present invention does not include or relate to insoles, as fully supported by the present specification, e.g., at pages 3-7.

Thus, the present invention does not recite, disclose, include or suggest insoles, but discloses and claims scented shoe shoes. Accordingly, the cited reference fails to disclose, teach or suggest each and every element of the present claims.

However, in order to further prosecution and reduce issues on appeal, Applicant has canceled claims 8, 12 and 13.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laughlin '485 disclosing deodorizing insoles, for the reasons presented on pages 6-7 of the office action.

Applicants have amended remaining independent claim 1 to recite an exterior sole to clarify that the present invention does not include or relate to insoles, as fully supported by the present specification, e.g., at pages 3-7.

Thus, the present invention does not recite, disclose, include or suggest insoles, but discloses and claims scented shoe shoes. Accordingly, the cited reference fails to disclose, teach or suggest each and every element of the present claims.

However, in order to further prosecution and reduce issues on appeal, Applicant has canceled claim 10.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laughlin '485 in view of Maples. Maples (US 5,024,008) comprises "a rubber overshoe to be worn over a boot worn by the hunter" with an animal "scent dispenser...which is attached to the overshoe for dispensing scent on the ground as the hunter walks" where the animal "scent dispenser is isolated from the boot so that the overshoe and dispenser may be removed from the boot...". The rubber overshoe, which is removable, and is not inherent to the boot itself, is not scented, and unlike the present invention which claims normal wear of said shoe sole exposes fresh surface area of said scented material/formulation compound releases a desired aroma, and further in Maples, the "...scent source means includes a sponge and animal lure impregnated therein". The presently claimed invention further does not include the use of an overshoe with a dispenser to dispense an animal scent.

Accordingly, the present claims distinguish over the cited reference(s), which do not suggest or teach the presently claimed invention of a shoe with an exterior sole with scented plugs or inserts that further comprise a pheromone. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claims 3 and 16 are rejected under 35 U.S.C. 103(a) are being unpatentable over Laughlin '485 in view of Williford. Williford (US 5,261,169) discloses where the "...article is a shoe insole and the active composition is an anti-microbial powder." Again, the examiner has mischaracterized the reference. In actuality, Williford more closely resembles Laughlin, et al. than the present disclosure in that the insole is installed in the interior surface of a shoe where the user's foot resides, and comes in direct contact with the foot of the shoe wearer.

An intended purpose for Laughlin and Williford, is to mask or counteract foot odors using a deodorizing insole, whereby the present invention has no deodorizing aspects for insoles, but is rather meant to provide a scent to the outer sole of the shoe, boot,

etc. Additionally, there is no suggestion in Laughlin and Williford for scenting the exterior sole of a shoe or boot, as presently claimed.

Thus, the present invention does not recite, disclose, include or suggest insoles, but discloses and claims scented shoes having scented exterior soles further comprising a smoking compound shoes. Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims.

Accordingly, the present claims distinguish over the cited reference(s). Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) are being unpatentable over Laughlin '485 in view of O'Brien. O'Brien (US 5,039,243) discloses fragrance releasing crayons. In the present invention, the colored sole is visible from the outside of the shoe as it is worn, whereas with Laughlin, the colored scenting means is only visible from the inside of the shoe. There is no suggestion or motivation to combine a reference for scented crayons with deodorizing insoles, such that the combination is improper under the MPEP.

Solely to further prosecution and reduce issues on appeal, claim 5 have been canceled.

An intended purpose for Laughlin is to mask or counteract foot odors using a deodorizing insole, whereby the present invention has no deodorizing aspects for insoles, but is rather meant to provide a scent to the outer sole of the shoe, boot, etc. Additionally, there is no suggestion in Laughlin for scenting the exterior sole of a shoe or boot, as presently claimed, and O'Brien's suggestion for scented crayons in no way makes up for the deficiencies of Laughlin in failing to suggest the presently claimed shoe having scented exterior soles.

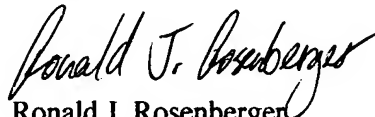
Thus, the present invention does not recite, disclose, include or suggest insoles, but discloses and claims shoes having scented exterior shoe shoes. Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims. Reconsideration and withdrawal of this rejection is requested.

Accordingly, the present claims distinguish over the cited reference(s) and meet the formal requirements of patentability.

Applicant respectfully requests reconsideration and allowance of the present claims.

The Examiner is invited to contact Applicant with any questions or comments.

Respectfully submitted,

A handwritten signature in black ink, reading "Ronald J. Rosenberger". The signature is written in a cursive, flowing style.

Ronald J. Rosenberger
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